

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5th Floor  
P.O. Box 45029  
Newark, New Jersey 07101

**FILED**

October 25, 2010

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Doreen A. Hafner  
Deputy Attorney General  
(973) 648-7454

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

NICHOLAS ERRICO, D.P.M.  
License No. 25MD00236600

TO PRACTICE PODIATRIC MEDICINE  
IN THE STATE OF NEW JERSEY

Administrative Action  
FINAL ORDER OF DISCIPLINE

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent, Nicholas Errico, D.P.M., is the holder of License No. 25MD00236600 and has been licensed to practice podiatric medicine in the State of New Jersey since August 27, 1996. Respondent's license expired on October 31, 2003.

**CERTIFIED TRUE COPY**

2. On June 27, 2002, in the United States District Court for the Southern District of New York, Respondent was found guilty after a jury trial of Counts One and Two of Indictment 00 CR 92 (KMW). Respondent was found guilty of conspiracy to commit health care fraud, mail fraud, and the crime of making false statements in connection with the payment of health care services while employed at Citywide Footcare, P.C. from about 1990 to 1999, in violation of Title 18, United States Code, Section 371. Respondent was also found guilty of defrauding health care benefit programs, including Medicare, through his delivery of podiatric services at Citywide Footcare, P.C. from about 1990 to 1999, in violation of Title 18, United States Code, Section 1347.

3. On or about October 15, 2009, Respondent entered into a Sentencing Agreement, dated April 20, 2009, in which he agreed to waive his right to appeal any and all possible trial or pre-trial issues in return for a reduced sentence.

4. On October 15, 2009, Respondent was sentenced to thirty (30) months imprisonment on each count to run concurrently, followed by a term of three (3) years of supervised release on each count to run concurrently. Respondent was also ordered to pay restitution to Medicare in the amount of \$318,266.

5. On or about January 11, 2010, Respondent surrendered for service of his term of imprisonment at the Metropolitan Detention Center in Brooklyn, New York.

### **CONCLUSIONS OF LAW**

1. The above criminal conviction in the United States District Court for the Southern District of New York provides grounds to take disciplinary action against Respondent's license to practice podiatric medicine in New Jersey pursuant to N.J.S.A. 45:1-21(f), in that Respondent has been convicted of a crime involving moral turpitude and relating adversely to the activity regulated by the Board.

2. The above criminal conviction in the United States District Court for the Southern District of New York provides grounds to take disciplinary action against Respondent's license to practice podiatric medicine in New Jersey pursuant to N.J.S.A. 45:1-21(k), in that Respondent has been convicted of committing and conspiring to commit health care fraud under Title 18, United States Code, Sections 371 and 1347.

### **DISCUSSION ON FINALIZATION**

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") revoking Respondent's license to practice podiatric medicine in the State of New Jersey was entered by this Board on July 1, 2010. On July 19, 2010, the POD was served on Respondent by both regular and certified mail return-receipt to his lawyer's office at 20 Vesey Street, Suite 400, New York, NY 10007. The green return-receipt for the POD mailed by certified mail was returned signed. The POD sent by regular mail was not

returned by the Post Office as undeliverable. In addition, on July 19, 2010, the POD was served on Respondent by certified mail return-receipt to his place of incarceration at MDC Brooklyn, Metropolitan Detention Center, P.O. Box 329002, Brooklyn, NY 11232 to the attention of Nicholas Errico, D.P.M., inmate no. 48232-054. The green return-receipt for the mailing directly to Respondent was returned signed. Thus, the Board deems service to have been effected.


The POD was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed, and submitting any and all documents or other written evidence supporting Respondent's request for consideration or offered in mitigation of the penalty.

The Board, having received no request for either modification or dismissal of the Stated Findings of Fact or Conclusions of Law, has determined that further proceedings are not necessary and that the POD should be made final.

ACCORDINGLY, IT IS on this 25th day of Oct, 2010,  
ORDERED THAT:

1. Respondent Nicholas Errico's license to practice podiatric  
medicine in the State of New Jersey shall be and hereby is revoked.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By:   
Paul Jordan, M.D.  
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.



**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.